

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	4:05CR3010-1
	)	
Plaintiff,	)	<b>MEMORANDUM</b>
v.	)	<b>AND ORDER</b>
	)	
SALOME GEE PEREZ,	)	
	)	
Defendant.	)	

The defendant pleaded guilty to conspiring to distribute and possess with intent to distribute cocaine base and, on November 8, 2005, was sentenced to 100 months' imprisonment ([filing 65](#)). His sentence was affirmed on direct appeal on October 23, 2006 ([filing 103](#)). On September 14, 2006, this court granted a motion filed by the government pursuant to [Federal Rule of Criminal Procedure 35\(b\)](#), and entered an amended judgment reducing the defendant's sentence to 80 months ([filing 96](#)). No appeal was taken from the amended judgment. On June 4, 2008, this court granted a motion filed by the defendant pursuant to [18 U.S.C. § 3582\(c\)](#) and reduced his sentence to 67 months ([filing 125](#)).

On December 18, 2008, the defendant filed a pro se notice of appeal pursuant to [18 U.S.C. § 3742](#) ([filing 128](#)). In response to this filing, the clerk of the court has issued a memorandum to the undersigned which states that the notice of appeal "appears to be untimely, but within the 30-day period for extension of time for excusable neglect per FRAP 4(b)." ([Filing 129](#).)

I agree that the notice of appeal is untimely, *see* [Fed. R. App. P. 4\(b\)\(1\)\(A\)\(i\)](#), but the clerk is incorrect in stating that the defendant may be eligible for an extension of time. The notice of appeal was not filed within "30 days from the expiration of" the appeal deadline of "10 days after . . . the entry of the judgment or the order being

appealed.” [Fed.R.App.P. 4\(b\)\(1\)\(A\)\(i\) & \(4\)](#). Consequently, the defendant’s notice of appeal, treated as a motion for extension of time to file an appeal, must be denied as untimely.

The clerk of the court has also issued a memorandum to the undersigned inquiring whether the defendant may proceed in forma pauperis on appeal ([filing 130](#)). In response to the clerk’s inquiry, I find that the appeal is not taken in good faith because the notice of appeal was not filed in a timely manner. The defendant therefore may not proceed in forma pauperis. See [Fed.R.App.P. 24\(a\)\(3\)](#).

IT IS ORDERED that:

1. The defendant’s notice of appeal ([filing 128](#)), treated as a motion for extension of time to file an appeal, is denied.
2. In response to [filing 129](#), the clerk of the court is directed not to process an appeal to the United States Court of Appeals for the Eighth Circuit on the basis of the aforesaid filing by the defendant.
3. In response to [filing 130](#), the court hereby certifies pursuant to [Federal Rule of Appellate Procedure 24\(a\)\(3\)](#) that the defendant’s appeal is not taken in good faith because the appeal is untimely; the defendant may not proceed in forma pauperis on appeal.
4. Pursuant to [Federal Rule of Appellate Procedure 24\(a\)\(4\)](#), the clerk of the court shall forward a copy of this memorandum and order to the Clerk of the United States Court of Appeals for the Eighth Circuit.

December 29, 2008.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge